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Attorney for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDLETON DIVISION

ANTHONY BYAM,

Plaintiff,

vs.

OREGON DEPARTMENT OF
CORRECTIONS and KYLE OSBORN,

Defendants.

Case No. 2:22-cv-414

COMPLAINT

Civil Rights Action (42 U.S.C. § 1983) for
cruel and unusual punishment in violation of
the Eighth Amendment; state law negligence
claim

DEMAND FOR JURY TRIAL

This is a Civil Rights action stemming from Defendants' unconstitutional and unreasonable failure to protect Plaintiff Anthony Byam from harm as he descended a prison staircase while handcuffed behind his back, and for Defendant's failure to seek medical attention for Mr. Byam for several hours after his injury. As a result of Defendants' actions, Mr. Byam suffered unnecessary physical and mental pain and suffering.

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JURISDICTION AND VENUE

1. This court has jurisdiction over the subject matter of this Complaint under 42 U.S.C. § 1983, and 28 U.S.C. §§ 1331, 1343(a)(3), (4). This Court has pendent jurisdiction over plaintiff's state law negligence claim under 28 U.S.C. § 1967.

2. Venue is proper within the District of Oregon because all of the events giving rise to this claim occurred in this judicial district, and all defendants reside in this judicial district. 28 U.S.C. § 1391(b). The acts and practices alleged herein occurred in Ontario, Malheur County, Oregon.

PARTIES

3. Plaintiff Anthony Byam is an adult who currently resides in Salem, Oregon, at the Oregon State Correctional Institution (OSCI); at the times relevant to this complaint, he was housed at Snake River Correctional Institution (SRCI) in Ontario, Oregon.

4. Defendant Oregon Department of Corrections (ODOC) is a department or division of the State of Oregon with the capacity to sue and be sued pursuant to the Oregon Tort Claims Act. Under *respondeat superior*, Defendant State of Oregon is liable in a state tort action for the actions or inactions of its agents.

5. At the time of the allegations made herein, Defendant Kyle Osborn was a corrections officer at SRCI. At that time, he was an employee of the State of Oregon and ODOC. At all times alleged, Defendant Osborn was acting under color of law, and is being sued in his individual capacity.

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FACTUAL ALLEGATIONS

6. On March 15, 2020, Mr. Byam was housed in the C Block of the Disciplinary Segregation Unit (DSU) at SRCL.

7. At approximately 2:30 PM, Defendant Osborn escorted Mr. Byam and his cellmate back to their DSU-C cells after they had showered. Mr. Byam and his cellmate were handcuffed behind their backs as Defendant escorted them.

8. The showers were located on the top tier of the unit, and Mr. Byam and his cellmate had to be escorted down a flight of stairs to return to their cell.

9. Defendant Osborn was aware of the substantial risk of serious harm to a prisoner who walked down stairs, handcuffed behind his back, without an officer escort close by to provide assistance if needed.

10. Defendant Osborn remained at the top of the flight of stairs as Mr. Byam and his cellmate descended the stairs. Mr. Byam fell about halfway down the stairway, and he was unable to catch himself or break the fall because he was restrained. Defendant Osborn was too far away to place hands on Mr. Byam to prevent him from falling.

11. Mr. Byam injured his back and elbow in the fall.

12. As Mr. Byam was returned to his cell, he asked Defendant Osborn to take him to medical services for evaluation and treatment. Defendant Osborn refused to do so.

13. For the next few hours, Mr. Byam asked any ODOC staff who walked past his cell to take him to medical services otherwise help him get medical attention.

14. At or about 6:00 PM, Defendant Osborn returned to Mr. Byam's cell and took him to medical services for evaluation and treatment of his injury.

15. Mr. Byam continues to experience pain, difficulty moving, and other medical issues with his back and elbow from the fall.

CLAIMS FOR RELIEF

16. Plaintiff brings claims under 42 USC § 1983, for violations made by the named Defendant, of Mr. Byam's Eighth Amendment rights to be free from cruel or unusual punishment. He also brings a state negligence claim against Oregon Department of Corrections.

17. Defendant Osborn is a person within the meaning of 42 U.S.C. § 1983.

18. Plaintiff seeks an award of economic damages, non-economic damages, punitive damages where appropriate, attorney fees and litigation expenses/costs against defendants.

CLAIM 1: VIOLATION OF CIVIL RIGHTS [42 U.S.C. § 1983] EIGHTH AMENDMENT (Deliberate Indifference to Medical Needs— Individual Liability)

19. Mr. Byam restates and incorporates here the allegations in all preceding paragraphs.

20. Under the Eighth Amendment, a convicted prisoner has the right to be free from "cruel and unusual punishments." A "cruel and unusual punishment" could include deliberate indifference to a prisoner's serious medical needs and/or failure to protect the prisoner.

21. Defendant Osborn observed Mr. Byam fall on the stairs, and Mr. Byam asked Defendant to take him to medical services for evaluation. Defendant Osborn did not take Mr. Byam to the medical unit for approximately three and a half hours after he observed Mr. Byam fall.

22. Defendant Osborn was deliberately indifferent to Mr. Byam's serious medical needs in failing to take Mr. Byam to medical services for approximately three and a half hours,

and/or in failing to contact the medical staff about the incident, knowing that Mr. Byam had fallen and was in pain.

23. Defendant Osborn further violated Mr. Byam's rights under the Eighth Amendment by failing to protect him from the substantial risk of serious harm to a prisoner walking down a flight of stairs with his hands handcuffed behind his back without an officer close by to assist him if he fell. Defendant was aware of this risk.

CLAIM 2: STATE TORT CLAIMS
(Negligence – Against Oregon Department of Corrections)

24. Mr. Byam restates and incorporates here the allegations in all preceding paragraphs.

25. Defendant Oregon Department of Corrections, acting by and through its employees and agents, was negligent in one or more of the following ways:

- a. In failing to exercise reasonable care to protect those in its custody, including Mr. Byam, from the unreasonable risk of harm of failing to properly escort him while he was handcuffed behind his back, including by failing to stay close enough to catch him when he began to fall while walking down the stairs; and
- b. In unreasonably delaying providing medical assessment and treatment to Mr. Byam for at least three and a half hours after his injury.

26. As the corrections agency holding Mr. Byam in custody, Defendant had a special relationship with Mr. Byam, and owed him a heightened duty of care. This duty included protecting him from foreseeable harms arising in SRCI.

27. Defendant's agents and employees knew or should have known that their acts or omissions would result in a foreseeable risk of harm and suffering to Mr. Byam. Because of this

foreseeable risk, Defendant owed Mr. Byam the reasonable care and duty of not exposing him to such harm.

28. Defendant's agents' and employees' conduct was unreasonable in light of the risk of harm to Mr. Byam and resulted in the aforementioned harm.

29. As a direct result of the actions and omissions of Defendant ODOC, Mr. Byam experienced pain, suffering, emotional distress. For his state negligence claim, Mr. Byam is entitled to compensatory and pecuniary damages in an amount not to exceed \$90,000.00.

30. Notice as required by the Oregon Tort Claims Act was provided to defendant ODOC within the statutorily prescribed time frame.

DEMAND FOR JURY TRIAL

31. For all claims alleged in this Complaint, Plaintiff demands a jury trial.

REASONABLE ATTORNEY'S FEES AND COSTS

32. 42 U.S.C. § 1988(b) allows "the prevailing party... a reasonable attorney's fee as part of the costs..." in an action brought under 42 U.S.C. § 1983.

33. Plaintiff requests that the Court grant a reasonable attorney's fee in this action.

CONCLUSION

WHEREFORE, plaintiff prays for relief as follows:

a. For judgment in favor of Mr. Byam against Defendants for his economic and non-economic damages;

b. For reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and

c. For such other and further relief as may appear just and appropriate.

DATED: March 14, 2022.

/s/ Alex Meggitt
Alex Meggitt, OSB #174131

P.O. Box 5248
Portland, OR 97208

Attorney for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Anthony Byam

(b) County of Residence of First Listed Plaintiff Marion
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Alex Meggitt, OJRC, PO Box 5248, Portland OR 97208;
(503) 563-3354

DEFENDANTS

Oregon Department of Corrections, Kyle Osborn

County of Residence of First Listed Defendant Marion
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input checked="" type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 USC 1983

Brief description of cause:
Eighth Amendment - deliberate indifference and failure to protect

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

3/14/2022

SIGNATURE OF ATTORNEY OF RECORD

s/ Alex Meggitt

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____